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EXAMINER

GRAHAM, GARY K

ART UNIT	PAPER NUMBER
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1744

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 05122004

Application Number: 09/524,612
Filing Date: March 14, 2000
Appellant(s): GRAHAM, SCOTT

Susan E. Shaw McBee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 February 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-9, 16 and 17.

Claims 10-15 are withdrawn from consideration as not directed to the elected invention.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

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(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-9 (Group I) stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 16 and 17 (Group III) stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

Note that appellant's Group II, claims 10-15 drawn to a method of washing a vehicle, is not part of this appeal as they are non-elected claims.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

However, note that claims 10-15 have been included with the appealed claims. Claims 10-15 are withdrawn from consideration and are not on appeal.

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(9) Prior Art of Record

2,571,606	Peterson	10-1951
5,177,831	Wirth	1-1993
481,824	GREAT BRITAIN	3-1938

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, use of "associated" appears vague. Is the mitt coupled with the washing brush or not? Such is especially confusing since claims 2-8 reference only the mitt of claim 1 and claim 16, which depends from claim 1, sets forth a brush comprising the mitt of claim 1. If claim 1 is the combination, then what is claim 16 setting forth? In view of such, claim 1 has been treated as the subcombination of just the mitt while claim 16 has been treated as the combination of brush and mitt.

In claim 17, line 1 appears somewhat confusing. It is unclear how a brush mounted to a car wash can be comprised of a cover adapted to fit over said brush. If the cover is what constitutes the brush, how can it be adapted to fit over itself? Clarification is requested

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wirth (U.S. patent 5,177,831).

As stated above, claim 1 has been treated as the sub-combination of the mitt.

The patent to Wirth discloses the invention as is claimed, including a sheepskin cover (10) that can be removably placed over motor vehicle wash brushes/sponges to reduce harm to the vehicle finish. Hook and loop fastening strips (20,21) are used to secure the cover to the brush/sponge.

Claims 1, 2, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Great Britain patent 481,824.

As stated above, claim 1 has been treated as the sub-combination of the mitt. Furthermore, the Great Britain (GB) patent does disclose a cover for a brush and the cover being in contact therewith. Defining the brush as a "vehicle wash brush" does not define any structure not disclosed by the GB patent. In other words, the brush of the GB patent could be used to wash a vehicle. Nothing would prevent such.

The GB patent discloses the invention as is claimed. Note figures 2, 3 and 6 which show a cover for brooms, brushes or hands. Said cover includes an elastic material enclosed in a hem around an aperture to receiving the broom.

With respect to claim 9, the device of the GB patent is considered a self-service vehicle wash. No structure has been set forth that defines over the GB patent. In other words, one could pick up the structure shown in figure 6 of the GB patent and proceed to clean a vehicle. Thus, the structure shown in figure 6 of the GB patent is fairly considered to be a self-service vehicle wash.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain patent 481,824 in view of Peterson (U.S. patent 2,571,606).

The GB patent discloses all of the above with the exception of the elastic cording (a) sewn in the hem being in the form of an elastic sheet sewn around the edge of the opening.

The patent to Peterson discloses a mop cover (fig.1) for fitting over the foot of a user to clean floors. The cover can include an elastic tape or sheet (22) sewn about the opening of the cover.

It would have been obvious to one of skill in the art to provide the elastic for the cover of the GB patent in the form of an elastic sheet sewn about the opening, instead of elastic cording sewn into the hem, as clearly disclosed by Peterson, as an art recognized equivalent elastic means. Both elastic piping or sheet material sewn about the edge of openings and elastic cording material sewn into the hem of openings are notoriously well known. Use of one or the other appears well with that which one of skill in the art would find obvious.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirth (U.S. patent 5,177,831).

The patent to Wirth discloses all of the above recited subject matter with the exception of the removable cover fit over a brush.

While Wirth does not disclose his cover as being fit over a brush, such appears obvious in view of the teachings of Wirth. Wirth discloses the use of vehicle washing brushes which employ bristles and are coupled with a liquid supply. Such is clearly considered to be a self-service car wash. At least in the broadest sense. Wirth also discloses that such brushes can harm a vehicle finish. Wirth further discloses that his mitt is comprised of a soft material to prevent damage to a vehicle finish when provided over a sponge base that if used by itself could damage a vehicle surface. To provide the mitt of Wirth on a well known vehicle wash brush as discussed by Wirth would have been obvious to one of skill in the art to provide a soft surface for the liquid supplied brush to prevent damage to a vehicle finish. One of the advantages discussed by Wirth is providing a cover with a soft surface to prevent damage to a vehicle finish that would occur otherwise without the cover. Merely providing the mitt of Wirth on a brush instead of a sponge appears obvious to one of skill in the art to provide a softer surface for vehicle cleansing.

(11) Response to Arguments

Appellant's arguments with respect to the 112 rejection are noted but not persuasive. Appellant argues that the use of the term "associated" is clear in the claims and is clear from the instant specification and figures how the removable association operates in the present invention. While the Examiner is not rejecting the term per se or how the mitt cooperates with the brush, its use in claim 1 is not clearly understood in light of the dependent claims. As stated above, claim 16 sets forth a foaming brush comprising a removable mitt according to claim 1. The specification sets forth that the foaming brush is simply the brush as shown in figure 1 (page 1, lines 5-7). If claim 1 is the combination of brush and mitt, what is claim 16 setting forth? In light of such, the Examiner construed claim 1 to be directed to the mitt with claim 16 directed to the combination of mitt with brush. Appellant's own Grouping of the claims sets forth that Group I, claims 1-9, is directed to the subcombination of mitt for washing brush. It is noted that Appellant does not comment on claim 16.

Appellant's arguments with respect to the 102(b) rejection by Wirth '831 are noted but not persuasive. While Appellant states that claim 1 is directed to both a brush and mitt, it appears that a reasonable interpretation from all the claims presented that claim 1 is to be directed to the subcombination of the mitt for use on a brush while claim 16 is directed to the combination of mitt with brush. As such, the patent to Wirth discloses the invention as is claimed, as recited above. In particular, Wirth discloses a mitt (10) that could be placed over sponges or brushes. Nothing would prohibit such. With respect to claim 9, note that such sets

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forth a vehicle wash comprising only a mitt as set forth in claim 1. Clearly Wirth has a mitt (10) as set forth in claim 1. In no way can the mitt of claim 1 be considered a combination by itself. Note that claim 9 does not set forth the mitt and brush combination of claim 1. The mitt of Wirth can be considered a self-service vehicle wash, as far as such defines any particular structure.

Appellant's arguments with respect to the Great Britain patent are noted but not persuasive. Appellant argues that the brush of the GB patent is not a "vehicle wash brush". Appellant also argues that "vehicle wash brush" does in fact define structure not disclosed by the GB patent. However, Appellant does not discuss what structure is defined by terming the device a "vehicle wash brush". Defining the brush as a "vehicle wash brush" does not define any structure not disclosed by the GB patent. In other words, the brush of the GB patent could be used to wash a vehicle. Nothing would prevent such. Use of "vehicle wash" to describe the brush only establishes what the brush is to be used for, not any particular structure for the brush. Indeed, Appellant sets forth in his arguments that the brush of the GB patent could theoretically be used to wash a vehicle. Appellant's argument with respect to claim 9 that the device of the GB patent could not be considered a self-service vehicle wash since it does not suggest a vehicle is noted but not persuasive. Note that a vehicle is not claimed nor is it a required part of claim 1 or claim 9.

Appellant's arguments with respect to the rejection of claim 8 under 103(a) as being unpatentable over GB patent '824 in view of Peterson '606 are noted but not persuasive. While Appellant argues that Peterson does not disclose a cover for vehicle wash brushes or mention vehicles, Peterson is not relied upon for such. Peterson is only relied upon to teach an elastic sheet sewn about an opening. As stated above, the GB brush device could be used to clean vehicles. Appellant does not appear to argue the combination of Peterson with the GB patent.

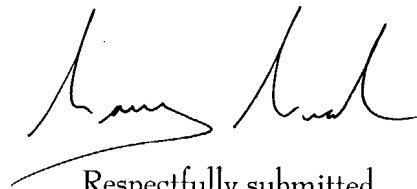
Appellant's arguments with respect to the rejection of claims 16 and 17 under 103(a) as being unpatentable over Wirth are noted but not persuasive. Appellant appears to argue that the brush disclosed by Wirth (col. 1, lines 38-41) is not a self-service car wash. However, it is not clear why such brush cannot be considered a self-service car wash. As set forth above, to provide the mitt of Wirth on a well known vehicle wash brush as discussed by Wirth would have been obvious to one of skill in the art to provide a soft surface for the liquid supplied brush to prevent damage to a vehicle finish. One of the advantages discussed by Wirth is providing a cover with a soft surface to prevent damage to a vehicle finish that would occur otherwise without the cover. Merely providing the mitt of Wirth on a brush instead of a sponge appears obvious to one of skill in the art to provide a softer surface for vehicle cleansing.

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While Appellant provides arguments for rejoinder of withdrawn claims, such is not an issue in this appeal.

Likewise, Appellant's arguments with respect to a drawing objection are noted, but such is not an issue in this appeal.

For the above reasons, it is believed that the rejections should be sustained.



Respectfully submitted,

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Primary Examiner
Art Unit 1744


GKG
May 13, 2004

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